American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

May 24, 2013

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2013-22)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Recommendations for 2013 - 2014 Guidance Priority List (Notice 2013-22)

Dear Sir/Madam:

The AICPA is pleased to offer our suggestions regarding the 2013 - 2014 Guidance Priority List, which were prepared by the AICPA Tax Division's committees and technical resource panels, and approved by our Tax Executive Committee.

The suggestions are listed under the AICPA working group that developed them, and we have indicated the priority order for our comments under each category of the attached document. For your convenience, contact information for each working group's chair and AICPA staff liaison is listed. Please feel free to contact these individuals directly with your specific questions or concerns.

In addition, the AICPA again encourages the Department of Treasury and the Internal Revenue Service to continue pursuing tax simplification. Although we recognize you must balance competing interests and concerns when drafting guidance, we urge you to consider the following as part of the process:

- Use the simplest approach to accomplish a policy goal;
- Provide safe harbor alternatives;
- Offer clear and consistent definitions;
- Use horizontal drafting (a rule placed in one Internal Revenue Code ("Code") section should apply in all other Code sections) to the greatest extent possible;
- Build on existing business and industry-standard record-keeping practices;
- Provide a balance between simple general rules and more complex detailed rules; and
- Match a rule's complexity to the sophistication of the targeted taxpayers.

We welcome the opportunity to discuss these comments. If you have any questions regarding this submission, please contact me at (304) 522-2553 or jporter@portercpa.com; or Melissa Labant, AICPA Director of Tax Advocacy & Professional Standards at (202) 434-9234, or mlabant@aicpa.org.

Sincerely,

Jeffrey A. Porter, CPA
Chair, Tax Executive Committee

Encl.

AICPA Tax Division
Comments on the
2013 - 2014 Guidance Priority List (Notice 2013-22)
May 24, 2013

Corporations and Shareholders Taxation Technical Resource Panel (Todd Reinstein, Chair, (202) 220-1520, reinstet@pepperlaw.com; or Jason Cha, AICPA Technical Manager, (202) 434-9231, jcha@aicpa.org.) NOTE: Comments are listed in priority order.

Consolidated Returns

1. Provide additional guidance as to the application of section 382(h)(6) in conjunction with Notice 2003-65, 2003-2 C.B. 747, within consolidation.

2. Provide guidance for determining when the Continuity of Business Enterprise (COBE) requirement is satisfied following a section 382 ownership change.

3. Provide additional guidance under Treas. Reg. § 1.1502-36.

   - Provide guidance that would permit a reattribution of losses where a worthless stock deduction is taken on subsidiary stock and the subsidiary ceases to be a member of the group but does not have a separate return year.

   - Regarding the interaction of Treas. Reg. § 1.1502-11(c) and Treas. Reg. § 1.1502-28 (i.e., how does Treas. Reg. § 1.1502-36 apply in a year when there is a disposition at a loss in the same year as a cancellation of debt event subject to Treas. Reg. § 1.1502-28 and Reg. § 1.1502-11(c)).

4. Provide guidance that would permit a worthless stock deduction with respect to a class of subsidiary stock notwithstanding that there is a section 381 transaction with respect to other classes of subsidiary stock.

5. Provide guidance with respect to group continuation and the application of Rev. Rul. 82-152. Specifically, reevaluate the existing group continuation rules under Treas. Reg. § 1.1502-75(d) to eliminate the uncertainty that exists as a result of the expanded application of Rev. Rul. 82-152.

6. Provide guidance with respect to the application of Treas. Reg. § 1.1502-76(b)(1)(ii)(B) to transactions occurring prior to or contemporaneously with the event that results in subsidiary's change in status as a member. Additionally, provide guidance regarding the treatment of discharge of indebtedness income that is recognized on the day the subsidiary becomes a nonmember and is not

excluded from gross income under section 108(a).

7. Provide guidance regarding the treatment of intercompany transactions in determining satisfaction of the gross receipts test for purposes of section 165(g)(3)(B).

8. Provide guidance as to whether an acquiring corporation needs to report on its Schedule UTP, Uncertain Tax Position Statement, a tax position taken on a selling consolidated group's pre-closing consolidated return for which the selling group did not record a reserve and whether the "only once rule" applies to tax positions already reported on Schedule UTP on the selling consolidated group's returns needs to be disclosed on the acquiring consolidated group's post-closing return.

9. Provide guidance that excludes the application of section 351(g) to redemptive transactions between members of a consolidated group where a member redeems its stock through the issuance of non-qualified preferred stock as defined under section 351(g).

10. Provide guidance concerning the application of Rev. Rul. 99-6 involving members of a consolidated group.

11. Provide guidance on circular basis adjustments under Treas. Reg. section 1.1502-11 regarding issues associated with the dispositions of brother-sister subsidiaries within the same consolidated return year.

<u>Corporations and Their Shareholders</u>

1. Guidance under section 382:

   - Provide guidance on identifying five percent shareholders of public companies.

   - Provide guidance under sections 382 and 384, including regulations regarding built-in items under section 382(h)(6).

2. Guidance with respect to section 108:

   - Provide guidance concerning how an election under section 108(i) affects the determination of recognized built-in gain or loss under section 382(h)(6).

   - Provide guidance as to the application of section 108(e)(6) if the subsidiary is insolvent before the contribution of the debt.

   - Provide guidance under section 108 for determining if a publicly traded company is insolvent when the stock is trading above $0.

3. Provide updated guidance regarding transactions involving receipt of no net equity value.

4. Provide guidance on the application of the solely voting stock requirement, meaningless gesture and deemed issuances under section 368(a)(1)(C) in the event of an upstream reorganization where no actual shares are issued and the transferee corporation has multiple both voting and non-voting classes of stock.

5. Finalize regulations under section 368(a)(1)(F).

6. Provide guidance on what constitutes an effective abandonment of stock.

7. Provide guidance as to what represents a "characterization" for purposes of section 385(c)(1) regarding a characterization of an interest as stock or indebtedness.

8. Strongly consider releasing a list(s) of specific common organizational actions that do (or do not) require reporting on Form 8937, Report of Organizational Actions Affecting Basis of Securities, to help taxpayers understand the filing requirement, without the administrative burden and cost that a taxpayer may need to go through to verify if reporting is necessary.

9. Provide guidance as to whether an acquiring corporation needs to report on its schedule UTP a tax position taken on a standalone target corporation's pre-closing return that the target corporation did not record a reserve for in the pre-closing year's returns.

10. Finalize regulations under section 362(e)(2).

11. Provide additional guidance on the following areas in conjunction with Rev. Proc. 2013-3, 2013-1 I.R.B. 113 that would eliminate issuance of private letter rulings:

    - Whether a "distributing" corporation's distribution of the stock of a "controlled" corporation meets the requirements of section 355(a)(1)(A) where, in anticipation of the distribution, the distributing corporation acquires control of the controlled corporation through a recapitalization or issuance of new stock resulting in a "high vote/low vote" structure;

    - Whether either section 355 or section 361 applies to a distribution of a "controlled" corporation's stock or securities in exchange for, and in retirement of, any debt of the distributing corporation if such debt was issued in anticipation of the distribution; and

- Whether a contribution of property and a distribution of property in a so-called "north-south" transaction are respected as separate transactions for federal income tax purposes.

12. Provide guidance on the scope and application of the rescission doctrine as described in Rev. Rul. 80-58, 1980-1 C.B. 181.

13. Provide guidance on how to determine the amount of gain or loss that is recognized if an exchange of excess principal amount (as defined in section 354(a)(2)) occurs.

Employee Benefits Taxation Technical Resource Panel (Chris W. Shankle, Chair, (318) 865-1355, shanklecpa@yahoo.com; or Kristin Esposito, AICPA Technical Manager, (202) 434-9241, kesposito@aicpa.org.) NOTE: Comments are listed in priority order.

Retirement Benefits

1. Finalize the regulations on the suspension/reduction of 401(k) safe harbor contributions.

2. Issue guidance on international tax issues relating to qualified retirement plans.

3. Provide model language for prototype documents to provide for the deferral of unused vacation and leave time.

4. Issue guidance to simplify correction methods under the Employee Plans Compliance Resolution System (EPCRS) as they pertain to correcting Actual Deferral Percentage (ADP) and Actual Contribution Percentage (ACP) testing failures after the 12-month statutory correction period.

   For 401(k) retirement plans, the ADP and ACP tests provide a limit on the amount of certain benefits provided under a plan to highly compensated employees over benefits provided to non-highly compensated employees. A plan annually satisfies these nondiscrimination requirements if the plan passes the ADP or ACP tests; however, if a plan fails these tests for a given plan year, corrective action must be taken within the 12-month statutory correction period following the close of the plan year in which the failure occurred. Any corrective action shall be made in accordance with the EPCRS and specifically a Voluntary Correction Program (VCP) submission to the Internal Revenue Service (IRS or "Service"). Failure to correct within the statutory correction period will result in plan disqualification.

5. Issue guidance to assist plan sponsors in correcting areas of noncompliance relating to Rollovers as Business Start-ups (a/k/a "ROBS").

   Rollovers, as a business start-up, are an arrangement in which a prospective business owner uses their retirement funds to pay for their new business start-up costs in a tax-free transaction. The prospective business owner rolls over their existing retirement funds to the ROBS plan, where the ROBS plan uses the rollover assets to purchase stock of the new business, resulting in the ROBS plan owning the new business.

   It has been our members' experience, that many ROBS plan sponsors are unaware that the plan is a qualified plan with its own set of regulatory requirements. We also think that noncompliant ROBS plans are costly to correct and can result in discrimination, prohibited transactions, plan disqualification and adverse tax consequences to the plan sponsor and plan participants.

Executive Compensation, Health Care and Other Benefits, and Employment Taxes

6. Issue Consolidated Omnibus Budget Reconciliation Act (COBRA)-related guidance, including:

   - Guidance on the applicability of section 162(l) to COBRA premiums.

   - Guidance under section 4980B regarding calculation of the application premium for COBRA continuation coverage.

7. Finalize the regulations on income inclusion under section 409A; proposed regulations were published on December 8, 2008.

8. Issue guidance on the treatment of partnership employees working for a single member limited liability company (SMLLC) or other disregarded entity owned by an upper tier partnership after the SMLLC employment tax reporting rules changed effective in 2009. Is an owner of the upper tier entity treated as a partner or an employee if he or she provides service to the lower tier SMLLC or other disregarded entity?

9. Regulations are needed to implement new section 3121(z) related to foreign employers, as added by section 302 of the Heroes Earnings Assistance and Relief Tax Act of 2008.

10. Issue guidance on the application of section 409A(b) as amended by the Pension Protection Act of 2006, especially guidance on employees transferred from one country to another.

11. Finalize the regulations on cafeteria plans under section 125. Proposed regulations were published on August 6, 2007. Also, regulations are needed under section 4980G on interaction of section 4980G and section 125 with respect to comparable employer contributions to employees' health savings accounts.

12. Provide clarification of the impact of the rebate on the safe harbor definition of compensation associated with the Affordable Care Act mandate which requires insurance companies to give their customers a rebate if they fail to spend 80-85 percent of premium dollars on medical care.

13. Develop a publication on the employer shared responsibility requirements similar to the IRS's Employment Tax Guide, which is written in layman's terms, to assist employers in complying with health care reform.

14. Finalize proposed regulations under section 4980H [Note: See AICPA Comments submitted March 14, 2013.]

15. Finalize proposed regulations under section 1411 on the 3.8 percent Medicare tax on net investment income.

Exempt Organizations Technical Resource Panel (Jeffrey D. Frank, Chair, (317) 656-6921, jdfrank@deloitte.com; or Melissa M. Labant, AICPA Director – Tax Advocacy & Professional Standards, (202) 434-9234, mlabant@aicpa.org.) NOTE: Comments are listed in priority order.

1. Change the extension process for Form 990, Return of Organization Exempt from Income Tax, from two separate three-month extensions to one single six-month extension. A single six-month extension for the Forms 990, 990-EZ, and 990-PF would be beneficial for several reasons.

    - Internal Revenue Code (IRC or "Code") section 6033 describes the annual return and information required of exempt organizations. Exempt organizations who want a six-month extension to file Forms 990, 990-EZ, or 990-PF must file two separate three-month extensions. However, taxpayers who file other types of annual returns, such as the Forms 990-T, 1040, and 1120, only need to submit a single six-month extension. Some people may argue that the Forms 990, 990-EZ, and 990-PF are information returns or reporting forms, not tax forms such as the Form 990-T, 1040, and 1120. Nevertheless, all of these forms have in common an annual filing requirement that involves the gathering of extensive data, both financial and informational. It is logical for all of these forms to have a single six-month extension.

    - A single six-month extension would also simplify the filing requirements for exempt organizations. These organizations are very likely to request both three-month extensions in order to completely and accurately file their annual returns. Especially with the emphasis on transparency in the new and improved Form 990, many organizations are taking extra time and care to properly disclose all relevant activities. A single six-month extension would reduce the administrative burden on exempt organizations as well as the IRS.

2. Issue final regulations under sections 501(r) and 6033 on additional requirements for tax-exempt hospitals as added by section 9007 of The Patient Protection and Affordable Care Act (PPACA).

3. Affirm that the conclusion and analysis set forth in G.C.M. 39813 represents the current IRS position with respect to the tax treatment of public charities whose exemptions have been retroactively revoked. If such is not the case, provide guidance as to the current position of the IRS. Pursuant to the Pension Protection Act (PPA) of 2006, most tax-exempt organizations were required to file an annual information return (Form 990 or 990-EZ) or a notice (Form 990-N) with the IRS. In addition, the law automatically revokes the tax-exempt status of any organization that does not file required returns or notices for three consecutive years. Although guidance has been issued with respect to reinstatement and retroactive reinstatement, no guidance has been provided with respect to the tax treatment of such retroactively revoked public charities.

4. Please clarify who constitutes a "patient" for purposes of the definition of "patient care." For example, would the following services be considered "patient care," especially when the individual receiving the services is not an inpatient of a hospital at the time the services are rendered: services provided via a telemedicine network; reading of images, laboratory services and pathology services where the technician or physician interpreting the tests does not actually see or "touch" the patient. Such guidance under section 501(r) would reduce uncertainty and support the move toward accountable care organization (ACO) and cost effective health care methods. In addition, absent guidance, costly information technology changes are being made by hospitals which will likely have to be made again when guidance is finally issued.

5. Issue guidance on whether Revenue Ruling 75-435 or General Counsel Memos 37001 (Feb. 10, 1977) or 38327 (Mar. 31, 1980) is the controlling authority on whether contributions from foreign governments to public charities exempt under section 509(a)(1) are subject to the two percent limitation on excess contributions.

6. Similar to the revised public support test on Form 990, Return of Organization Exempt from Income Tax, add a section for supporting organizations to substantiate their type to erase uncertainty by the reader of the Form 990 as well as for the organization to document for its records.

7. Withdraw Temp. Reg. § 1.170A-9T. Issue final regulations defining section 170(b)(1)(A) organizations with one change to the "Definition of support; meaning of general public" under Temp. Reg. § 1.170A-9T(f)(6)(i). Similar to governmental units and organizations described in section 170(b)(1)(A)(vi), provide an exception from the two percent limitation for organizations described in section 170(b)(1)(A)(i)-(iv). There is no reason to limit the support that churches, schools, hospitals, supporting organizations and similar entities provide to other charitable organizations.

8. Issue a revenue procedure allowing all members under a group ruling (including the central organization and the subordinate organizations) to file a single consolidated return rather than the current process which requires a separate return for the central organizations and a consolidated return for all consenting subordinates. The AICPA strongly believes a single consolidated return more accurately reflects the operations of the group.

9. Issue guidance limiting the reporting on Form 990, Schedule R, Parts III and IV of brother-sister related party affiliates of central or subordinate members of a group exemption similar to the exclusion from reporting of tax-exempt members of the group. For example, there may be hundreds of organizations taxable as partnerships or corporations that are affiliated with a particular church whose exempt members are covered by a group ruling and not reportable in Schedule R, Part II. But many of those taxable entities may meet the technical definition of related parties merely because of the centralized structure at some high level in the church and as such are currently reportable on multiple Forms 990 for the various members covered by the group ruling. However, there may be no board overlap or intercompany transactions with those entities beyond their direct owners and their brother-sister affiliates controlled by their direct owners. Issue guidance limiting the reporting to only those related parties directly controlled by the filing organization or with whom the filing organization has engaged in transactions exceeding a fixed dollar amount.

10. We request the IRS provide additional guidance that allows organizations that have had their exempt status revoked for failure to make required annual filings for three years under section 6033(j) the option to request prospective reinstatement and simultaneously but separately request retroactive reinstatement to be determined at a later date. This recommendation allows organizations that qualify to resume operations and solicit the contributions it needs to survive as an organization. It also allows the IRS additional time to properly consider whether reasonable cause exists for the retroactive reinstatement.

Individual Income Taxation Technical Resource Panel (Jonathan Horn, Chair, (212) 744-1447, jmhcpa@verizon.net or John Scheid, AICPA Technical Manager, (202) 434-9268, jscheid@aicpa.org.) NOTE: Comments are listed in priority order.

1. Guidance is needed regarding issues of basis reporting on Form 1099-B. Basis reporting on Form 1099-B began with 2011 tax returns and various issues arose that warrant guidance. We encourage the IRS to request comments from the public to uncover additional issues to ensure that extended guidance addresses all issues. Examples of problems with the basis reporting include the following:

   - How do taxpayers and practitioners properly report the sale of a publicly-traded partnership? Broker-reported basis is not reflective of any return of capital or other changes to taxpayer's original basis. In addition, for royalty trusts, a broker has no information on what amount of depletion has been deducted by the taxpayer. Gain or loss must be split between capital and ordinary.

   - How do taxpayers and practitioners properly report corrections to amounts indicated as "wash sale loss disallowed" where the broker used an inappropriate method of calculating figures reported to the IRS and taxpayer?

   - How should taxpayers and practitioners respond to matching notices where the correct basis, gross proceeds, gain/loss, holding period and tax have been reported by the taxpayer on the return but either the wrong box was checked (A or B) on Form 8949, Sales or Other Dispositions of Capital Assets, or the improper adjustment code was entered on Form 8949 by taxpayer?

2. Guidance is needed on how section 6041, Information at source, applies to owners of rental real estate.

   - P.L. 111-240 (9/27/10), the Small Business Lending Fund Act of 2010, modified section 6041 to add subsection (h) requiring certain landlords to file Form 1099-MISC for payments made for services in excess of $600. The legislative history provided: "Under the provision, recipients of rental income from real estate generally are subject to the same information reporting requirements as taxpayers engaged in a trade or business. In particular, rental income recipients making payments of $600 or more to a service provider (such as a plumber, painter, or accountant) in the course of earning rental income are required to provide an information return (typically Form 1099-MISC) to the IRS and to the service provider." This new provision was effective starting after 2010.

   - P.L. 112-9 (4/14/11), the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, repealed section 6041(h) retroactive to January 1, 2011. Thus, the 1099 reporting obligation for landlords never went into effect.

- Despite repeal of section 6041(h), the 2011 and 2012 1040 Schedule E and instructions included the following new questions (A and B):

SCHEDULE E (Form 1040)
Department of the Treasury Internal Revenue Service (99)

Supplemental Income and Loss
(From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)
► Attach to Form 1040, 1040NR, or Form 1041. ► See separate instructions.

OMB No. 1545-0074
2011
Attachment Sequence No. **13**

Name(s) shown on return | **Your social security number**

A Did you make any payments in 2011 that would require you to file Form(s) 1099? (see instructions) ☐ Yes ☐ No
B If "Yes," did you or will you file all required Forms 1099? ☐ Yes ☐ No

These questions contradict the legislative history of P.L. 111-240 (above) and repeal of section 6041(h). With these questions added to Schedule E rather than Schedule C, they imply that landlords who are not in a trade or business may be required to file Form 1099-MISC. The questions raise issues as to the distinction between a real estate rental that qualifies as a trade or business for section 6041 purposes and one that does not.

Clarification is needed under section 6041 as to when an owner of rental real estate is required to file Form 1099-MISC. Also, given the use of the term trade or business and special rules for rental real estate including under section 1402 (self-employment tax), section 469 (passive activity loss limitation) and section 1411 (special tax on net investment income), such guidance should explain how all of these rules apply to owners of rental real estate. In addition, relief should be granted to individuals owning rental real estate who are required to file Form 1099-MISC, but failed to do so for 2011 and 2012 due to the confusion in the law and well as in instructions to Schedule E and Form 1099-MISC.

3. Formal guidance is needed on the filing procedures for Registered Domestic Partners (RDPs) and same-sex couples in states that grant these individuals community property rights, as well as for such couples in other states.

In 2010, PLR 201021048, CCA 201021049 and CCA 201021050 were issued. These rulings note that due to a state law change, California RDPs should treat income that is community property income for state purposes, as such when they file their federal return.

Publication 17 for 2012 (page 4) states: "A registered domestic partner in Nevada, Washington, or California (or a person in California who is married to a person of the same sex) generally must report half the combined community income of the individual and his or her domestic partner (or California same-sex spouse). A similar statement is included in the Form 1040, U.S. Individual Income Tax Return, instructions (page 20). Subsequent to April 15, 2011, the IRS posted to its website, a set of questions and answers on various aspects of how registered domestic partners and same-sex couples in community property states file their income tax returns (http://www.irs.gov/uac/Questions-and-Answers-for-Registered-Domestic-Partners-and-Same-Sex-Spouses-in-Community-Property-States).

This informal guidance raises several issues that need to be addressed in a more detailed and formal manner. These issues include the following issues:

- Not all affected taxpayers were aware of or understood the new guidance. Per CCA 201021050, "for tax years beginning after December 31, 2006, a California registered domestic partner must report one-half of the community income, whether received in the form of compensation for personal services or income from property, on his or her federal income tax return." This CCA goes on to state that for "tax years beginning before June 1, 2010, registered domestic partners may, but are not required to, amend their returns to report income in accordance with this CCA."

  This statement about amending returns seems to imply that the requirement to report community income as such on the federal income tax return is not effective until 2011 tax returns. However, the "June 1, 2010" date appears to be incorrect because in May 2010 when the CCA was issued, 2010 returns could not be amended because they were not yet filed.

  Thus, some who were aware of the guidance or read summaries of it may have believed that the new way of reporting community income did not apply until 2011.

  While the Q&As issued in mid-2011 are helpful, they do not address all issues, were issued after many individuals had already filed their 2010 tax returns, and are not readily found or even searched for by individuals and tax return preparers.

  Guidance is needed in the form of revenue rulings and/or regulations that are published in the Internal Revenue Bulletin and constitute higher level authority than counsel rulings or questions and answers on a website that are not binding authority. This formal guidance should also be highlighted on the IRS websites for the general public and practitioners, as well as in press releases so that more people are aware of the new rules. It should also clearly state what the treatment is in all community property states and for both RDPs and same-sex couples. This guidance should also explain what affected taxpayers should do who did not properly report community income in 2012 and prior years for which the statute of limitations is still open.

- Various questions exist such as regarding the handling of estimated tax payments. The 2012 Annual Report of the IRS National Taxpayer Advocate provides an overview to several specific issues in need of guidance.[1]

- A procedure for filing amended returns for eligible RDPs and same-sex partners is needed. As noted in the 2010 informal guidance, amended returns can be filed for 2007, 2008 and 2009. Without a procedure in place for handling these returns, taxpayers are at risk of having penalties and interest assessed. For example, where one partner had high income in 2009 and the other partner had much lower income, amended returns would be recommended. On the amended returns, one partner will have a refund which the other's amended return will show tax due. Given the clarification of prior year state property law offered by the 2010 informal guidance, penalties should not be applied. Guidance in this area for returns processing personnel, tax practitioners and taxpayers would be helpful.

In addition to compliance issues for RDPs and same-sex couples in community property states, issues also exist for such couples in non-community property states that warrant guidance. Such guidance should address:

- How RDPs and same-sex couples in non-community property states who jointly own income-producing assets should report each individual's share of the income.

- How the effect of court decisions holding that the Defense of Marriage Act (DOMA) is unconstitutional, affects filing status of all RDPs and same-sex couples.[2]

- How other state law relationships, such as civil unions, are treated for federal tax purposes.[3]

4. Update and finalize the longstanding temporary regulations under section 163(h) (Treas. Regs. §§ 1.163-9T and 1.163-10T) to provide greater clarity and certainty to taxpayers and practitioners.

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[1] National Taxpayer Advocate, 2012 Annual Report to Congress, pages 449-455; available at http://www.taxpayeradvocate.irs.gov/userfiles/file/Full-Report/Status-Updates-Federal-Tax-Questions-Continue-to-Trouble-Domestic-Partners-and-Same-Sex-Spouses.pdf.

[2] See Golinski v. United States Office of Personnel Management, 2012 U.S. Dist. LEXIS 22071 (ND CA), and Gill et al. v. Office of Personnel Management, 699 F.Supp.2d 374 (D.Mass., 2010). A case is pending before the U.S. Supreme Court - Windsor v. U.S, 833 F.Supp.2d 394 (S.D.N.Y. Aug. 19, 2011).

[3] See, for example, the August 30, 2011 letter from IRS Chief Counsel to H&R Block on the treatment of a civil union in Illinois involving an opposite-sex couple. This unofficial guidance provided that the couple could file jointly as husband and wife. The IRS Chief Counsel letter is available at http://law.scu.edu/blog/samesextax/file/IRS%20Civil%20Union%20letter.pdf.

The Tax Reform Act of 1986 made changes to section 163 regarding personal and home mortgage interest. Further changes were made to the home mortgage interest rules by the Revenue Act of 1987. Temporary regulations were issued on these provisions soon after the legislative changes. Several of the regulations were issued prior to the effective date of the change made to section 7805 by the Technical and Miscellaneous Revenue Act of 1988 providing that temporary regulations expire within three years of issuance (effective for regulations issued after November 20, 1988). Thus, temporary regulations issued after enactment of the Tax Reform Act of 1986 and before November 21, 1988, which have not been finalized, remain in their temporary form.

In addition, not all of the regulations are complete or current, such as Treas. Reg. § 1.163-10T on home mortgage interest. Among unsettled issues are the following:

- Section 163(h)(4)(A) does not provide certainty on how to define a qualified residence or a second residence in the context of divorce.

- Must the taxpayer be both responsible for the mortgage and own the underlying property before the interest is deductible? (Or, may the taxpayer satisfy only one of these two requirements?) For example, husband may transfer ownership of the residence to the wife but remain responsible for the mortgage. Is the interest deductible?

- What is the proper method to determine deductible qualified residence interest when there are multiple debts that exceed the debt limit? While CCA 201201017 and IRS Publication 936 provide information on this question, official guidance is needed, such as in regulations.

- Further, guidance is needed regarding whether the $1,000,000 "aggregate" acquisition indebtedness referred to in section 163(h)(3)(B) refers to and applies per taxpayer or per residence. This is particularly important with regard to unmarried taxpayers who jointly own a residence in light of the interpretation presented in CCA 200911007, issued on March 13, 2009 and by the Tax Court in Sophy, 138 TC No. 8 (2012). While these rulings conclude that the mortgage dollar limitations apply per residence rather than per taxpayer/owner, guidance is needed in order to properly apply this conclusion to fact patterns beyond those in the two rulings. For example, assume a brother and sister own a vacation home jointly. In addition, each owns a principal residence with their spouse. If each of the three homes has a mortgage of $1.1 million, how is the section 163(h) limitation applied to each couple on their joint returns? What if either files as married filing separately? What if a same-sex couple in a community property state owns a principal residence and a vacation home as community property with mortgages on each totaling over $1.1 million? There are many other variations of fact patterns that raise issues of how to apply the mortgage limitations that should be addressed by formal guidance, ideally, by regulations that update and eventually finalize Treas. Reg. § 1.163-10.

5. Update and finalize the longstanding temporary regulations under section 163 on interest tracing and identification of the type of interest generated from a debt, in order to provide greater clarity and certainty to taxpayers and practitioners.

The interest tracing regulations of § 1.163-8T were issued in 1987 (TD 8145, 7/1/87), soon after enactment of the Tax Reform Act of 1986 which increased the importance of identifying the type of interest generated on any debt. These temporary regulations were issued before the effective date of section 7805(e) which provides that temporary regulations expire after three years.

In 1989, these regulations were modified by Notice 89-35, 1989-1 CB 675, which made significant changes to how the regulations apply to identify the use of borrowed funds and their operation with respect to debt of passthrough entities. Notice 89-35 supplemented earlier guidance: Notice 88-20, 1988-1 CB 487 and Notice 88-37, 1988-1 CB 522. When a practitioner has a question on interest expense classification under section 163 and turns to the regulations, the practitioner will not readily find the Notices and therefore, can easily apply the law incorrectly.

The interest tracing regulations have been in temporary form for over 20 years. It would be helpful to have then finalized with incorporation of the changes provided in Notices, 89-35, 88-37 and 88-20, as well as any clarifications provided in court cases.

6. Guidance is needed to clarify the requirements for deductibility of real property taxes under section 164.

Issues have existed as to what types of real property taxes are deductible under section 164. This provision states that personal property taxes must be ad valorum; there is no such stated requirement for real property taxes. Treas. Reg. § 1.164-4(a) provides that to be deductible, real property taxes must be “levied for the general public welfare by the proper taxing authorities at a like rate against all property in the territory over which such authorities have jurisdiction.” There is no definition of “like rate” in the Code or regulations.

Rev. Rul. 80-121 provides that one characteristic of a deductible real property tax is that it is "measured by the value of real property." PLR 8033022 held that a parcel tax was not deductible under section 164. The ruling explains that "rate" in "like rate" refers to a proportion or ratio. In the ruling, the IRS stated that the parcel tax is "not levied at a like rate within the meaning of the regulations under section 164 of the Code; the tax is a specific tax, not a tax levied according to value, one of the characteristics that a real property tax must have in order to be deductible under section 164(a)(1)."

The 2012 instructions to Schedule A, Publication 530, Tax Information for Homeowners and Tax Topic 503 (updated April 15, 2013) all contain statements that in order to be deductible, real estate taxes must be charged uniformly against all property in the jurisdiction at a like rate.

In April 2012, the IRS released Information Letter 2012-18 (http://www.irs.gov/pub/irs-wd/12-0018.pdf) which states: "there is no statutory or regulatory requirement that a real property tax be an ad valorem tax to be deductible for federal income tax purposes." The letter also notes that the IRS "will recommend appropriate revisions to our forms and publications on this subject."

Issues remain as to when real estate taxes are considered taxes under section 164 rather than assessments for local benefits. In addition, given the language of Rev. Rul. 80-121 and PLR 8033022, official guidance is needed on the application of section 164 to payments labeled as real property taxes at the local level. Such guidance could include a new revenue ruling or regulations under section 164; merely updating the IRS form instructions and publications is insufficient as they are not binding authority for purposes of penalties under sections 6662 and 6694.

7. Guidance is needed relating to the coordination of a tuition payment and the receipt of a distribution from a 529 Plan. Specifically, what is the permitted period of time prior to and after the payment of a qualified expense to make a qualified distribution? For example, if a taxpayer makes a tuition payment in September 2012, but receives the 529 distribution in January 2013, assuming no other tuition payments are made, is the 2013 distribution taxable? Section 529(c)(3) does not address the question. The same question arises if the distribution precedes the payment of qualified education expenses. Guidance is needed on what constitutes a taxable event with regard to the timing of distributions and subsequent payments.

In January 2008, the IRS issued an advance notice of proposed rulemaking (Announcement 2008-17; 2008-9 IRB 512, March 3, 2008) (ANPRM) to curb the possible abuse of section 529 qualified tuition program accounts by creating a general anti-abuse rule and other obstacles to prevent individuals and entities from using the accounts to avoid transfer and other types of taxes. Although a number of organizations commented, there has been no action to date.

8. Guidance is needed on the statutory terms that were introduced by Title XII of the Pension Protection Act of 2006 pertaining to appraisals and individuals performing these appraisals. Proposed regulations (REG-140029-07--Charitable Contributions: Cash and Noncash: Substantiation) were published in August 2008 but have not been issued to date. The AICPA submitted comments on November 5, 2008, requesting further clarification of the terms "generally accepted appraisal standards" and "qualified appraiser."

9. Official guidance is needed on the treatment of Medicare Part B and section 162(l) for self-employed individuals. A change in the treatment of this item was first noted in the 2010 Form 1040 instructions. In addition, Publication 535, Business Expenses, states on page 18: "Medicare premiums you voluntarily pay to obtain insurance that is similar to qualifying private insurance can also be used to figure the deduction. If you previously filed a return without using Medicare premiums to figure the deduction, you can file an amended return to refigure the deduction." This new interpretation should be issued in an official pronouncement, such as a revenue ruling, rather than in form instructions and publications which are not considered binding guidance or "authority" for section 6662 purposes. In addition, "voluntarily pay" and the application to owners of passthrough entities should be explained in official guidance. Finally clarification is needed regarding the treatment of Medicare premiums paid by a self-employed taxpayer's spouse. CCA 201228037 states that Medicare premiums paid for a self-employed taxpayer's spouse may be deducted under section 162(l). However, it also states that "Sole proprietors must pay the Medicare premiums directly." Since Medicare premiums are usually withheld from the covered individual's Social Security payment, the service should explicitly state that they would consider such payments as having come directly from the sole proprietor for purposes of section 162(l).

10. Guidance is needed on how section 6041, Information at source, applies to taxpayers making payments to non-corporate entities which cover both personal and business expenses. An issue that needs to be addressed is whether these individual taxpayers are subject to the Form 1099-MISC reporting requirements for applicable payments made to non-corporate entities. For example, there are certain taxpayers who may allocate tax preparation fees paid to their tax preparer between different schedules such as Schedules A, C and E. The allocation is made as a portion of the tax preparation expense is allocable to their trade or business (Schedules C and E) and the non-trade or business sections of their tax return.

    The instructions for Form 1099-MISC indicate that payments need to be reported when made in the course of your trade or business. In addition, Form 1040, Schedule E, Supplemental Income and Loss, has questions in Part I that ask the taxpayer if they have complied with the Form 1099 reporting requirements.

    We request clarification if taxpayers are required to file Form 1099-MISC in those circumstances when they file Schedule C for a sole proprietorship or Schedule E to report trade or business income that is passed through to them on a Schedule K-1. We feel that this adds more complexity and an increased compliance burden for taxpayers who operate a small business outside of a formal entity structure such as an S corporation, partnership or a limited liability company or for taxpayers who have trade or business activities allocated to them on a Schedule K-1.

11. Guidance is needed on whether the service views tablets (such as iPads) to be listed property under code section 280F or if they may be treated similarly to cellphones under the provisions of Notice 2011-72.

International Taxation Technical Resource Panel (G. Christine Ballard, Chair, (408) 369-2400, christine.ballard@mossadams.com; or Kristin Esposito, AICPA Technical Manager, (202) 434-9241, kesposito@aicpa.org.) NOTE: Comments are listed in priority order.

1. Guidance is needed regarding foreign tax credits, in particular:

    - Provide guidance under section 901(m), including providing exemptions for certain covered asset acquisitions where basis difference is de minimis and where a taxpayer receives a basis step-up for local tax purposes that is comparable to the U.S. tax step-up.

    - Provide guidance on the application of section 904(d)(6), including the interaction of such provision in the context of treaties that already contain their own separate limitation regime for the treaty credit.

- Guidance is needed under section 905(c) regarding taxes paid after a liquidation, stock sale, or section 338 election.

- Finalize guidance under Temp. Reg. § 1.905-3T, -4T and -5T.

- Issue guidance relating to the application of the overall foreign loss rules to certain dispositions involving partnerships.

- More complete guidance is needed regarding the application of Treas. Reg. § 1.865-1(a)(2) and Treas. Reg. § 1.865-2(a)(3) under which losses are allocated to reduce foreign source income if gain on the sale of the property (including stock) would have been taxable by a foreign country and the highest marginal rate of tax imposed on such gains in the foreign country is at least 10 percent.

2. Guidance is needed in the following areas related to inbound transactions:

   - Revise, as appropriate, and finalize the proposed section 163(j) "earnings stripping" regulations, taking into account taxpayer comments and developments since the original issuance of the proposed regulations.

   - Provide guidance on the application of Temp. Treas. Reg. § 1.897-6T and section 1445 to non-recognition transactions involving transfers of United States Real Property Interests (USRPI) to partnerships, and dispositions of interests in partnerships that directly and indirectly hold USRPIs.

   - Provide guidance to explain the application of section 304(b)(6).

   - Provide guidance on the amendment made to section 304(b)(5) by The Education Jobs and Medicaid Assistance Act (P.L. 111-226, August 20, 2010), including guidance on what is considered "subject to tax" for purposes of section 304(b)(5)(B).

3. Guidance is needed in the following areas related to outbound transactions:

   - Finalize the proposed section 987 regulations relating to foreign currency translation gains and losses with respect to branch transactions (taking into account public comments with respect to the proposed regulations). [Note: See AICPA comments to IRS submitted on March 29, 2007.]

   - Finalize existing regulations under section 6038D. [Note: See AICPA comments to IRS submitted on October 25, 2012.]

   - Provide guidance under section 6038D(b)(2)(B) defining instruments and contracts to be treated as specified foreign financial assets.

- Issue updated regulations under section 367(d) reflecting changes to the statute since its original issuance.

- Issue guidance relating to the carryover of tax attributes in section 355 transactions.

- Issue additional guidance under the relevancy rules Treas. Reg. § 301.7701-3(d), including the impact of certain acquisitions of entities that are not relevant and the consequences of certain elections relating to such entities.

- Issue guidance on the treatment of Mexican Land Trusts for purposes of section 6048 expanding the guidance provided in PLR201245003 to all taxpayers.

- Issue guidance that internal restructurings within a U.S. multinational group following a section 338(g) election of a foreign target corporation made by one of the members of the U.S. multinational group is not a transaction described in Notice 2004-20.

4. Guidance is needed related to the following areas related to Subpart F/Deferral:

- Finalize proposed regulations under section 959, regarding exclusions from income of previously taxed earnings, and proposed regulations under section 961, regarding basis adjustments.

- Provide more complete and definitive guidance under the passive foreign investment company (PFIC) regulations. In particular, (1) update the PFIC regulations to take into account the enactment of section 1297(e), which eliminates the overlap of the PFIC and Subpart F regimes under certain circumstances (including the application of section 1297(e) to a PFIC owned by a U.S. partnership that has U.S. partners) (see e.g., PLR 200943004), (2) provide guidance under section 1297(c) regarding the 25 percent ownership look-through rule and its interaction with the section 1297(b)(2)(C) related party income rules, and (3) provide guidance on the application of section 1297(b)(1)'s definition of passive income.

- Provide guidance on section 960(c), including guidance on the application of the provision when there is either a deficit or previously taxed earnings and profits in an upper-tier foreign corporation in the chain of ownership. Additionally, guidance also is requested on the application of this provision when a taxpayer has section 956 investments that pre-date and post-date the effective date of section 960(c).

- Issue regulations pursuant to Notice 2007-13 regarding the substantial assistance rules for foreign base company services income.

- Provide guidance under section 267(a)(3)(B), including guidance regarding the timing of deduction for interest, rental and royalty payments to CFCs that qualify for exclusion under section 954(c)(6) or the same country exception and guidance regarding exceptions for appropriate transactions pursuant to section 267(a)(3)(B)(ii). Also, provide guidance relating to when an item payable to a CFC, and subject to section 267(a)(3)(B), that is included in the gross income of a United States person by reason of section 956 or the payment of an actual dividend (i.e., other than by reason of section 951(a)(1)(A)), will be considered an amount attributable to such item that is includible in the gross income of such United States person.

- Provide additional guidance under section 954(c) relating to the active rent or royalty exception.

- Provide guidance under section 961(c) regarding basis adjustments to the stock of a controlled foreign corporation (CFC) held through partnerships.

- Finalize the proposed section 898 regulations on conforming year-ends of certain foreign corporations to the year-ends of their U.S. shareholders.

- Provide guidance with respect to the Treas. Reg. § 1.954-2(b)(4) substantial assets test relevant to qualification under the same country exception for interest and dividends, as applied to (i) stock in non-CFC foreign corporations; and (ii) banks and insurance companies.

- With respect to section 952(c)(2) subpart F income recapture, provide guidance regarding the application of "rules similar to rules applicable under section 904(f)(5)," and in particular the latter section's incorporation of the disposition rules of section 904(f)(3).

- Redraft Treas. Reg. § 1.6038-2(j)(2) and (3) to conform to the instructions to Form 5471, Information Return of U.S. persons With Respect to Certain Foreign Corporations, clarifying that a U.S. shareholder who qualifies as a Category 4 or Category 5 filer of Form 5471 is not required to file a statement with the U.S. shareholder's own tax return where both of the following conditions are met: (1) ownership in the foreign corporation is solely through application of constructive ownership principles; and (2) the U.S. person through which the U.S. shareholder constructively owns an interest in the foreign corporation files Form 5471 reporting all required information. [Note: See AICPA comments submitted March 26, 2013.]

- Provide a regulatory exception under section 6038 for down-stream attribution causing partnerships, S-corporations, and trusts to be required to file Form 5471 or Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, for constructive ownership of a foreign corporation (or partnership) created solely for attribution from its partners, shareholders or beneficiaries.

5. Guidance is needed in the following areas related to withholding tax regimes under Chapter 3 and Chapter 4:

- Continue to align the FATCA regulations with the current withholding regimes under Chapter 3 and Chapter 61.

- Following the retroactive withdrawal of Treas. Reg. § 1.1441-1(b)(7)(iii) by T.D. 9323, provide guidance on liability of a withholding agent for interest with respect to withholding under section 1445 or section 1446, if the withholding agent does not withhold with respect to a foreign person that has no U.S. tax liability, or that has satisfied its U.S. tax liability.

- Provide further clarification of Section 871(m) for the applicability of "specified notional principal contract" beyond the scope of Chapter 4 overlays.

- Provide further guidance on the event of a default (either stand-alone or part of an Expanded Affiliated Group) under IRC 1471-1474.

- Provide additional guidance regarding sponsored entities ("Sponsored FFIs") under Treas. Reg. 1.1471-5(f)(1)(i)(F).

6. Guidance is needed in the following additional areas:

- Continue to provide additional guidance relating to Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts, for the reporting of foreign bank and financial accounts. [Note: See AICPA comments to FinCEN and IRS submitted on June 27, 2011, AICPA comments to FinCEN and IRS submitted on May 31, 2011, AICPA comments to Treasury, IRS and FinCEN submitted on November 19, 2010, AICPA comments to FinCEN (with copies to Treasury and IRS) submitted on April 30, 2010, as well as AICPA comments to Treasury, IRS and FinCEN submitted on November 16, 2009.]

- Provide guidance relating to the operation of certain treaty provisions, including the application of reduced or zero-rate tax provisions in treaties with respect to dividends received through hybrid disregarded entities (The Service has issued private letter rulings relating to this issue. See e.g., PLRs 200626009 and 200522006) and the application of certain anti-hybrid provisions (e.g., the treatment of such provisions in connection with the application of the branch profits tax).

- Clarify and relax the double reporting rules under the section 1461 regulations and the treaty-based reporting requirements under section 6114.

- We request the development of, and guidance on, a procedure under which U.S. partnerships may file a composite individual income tax return on behalf of partners who are nonresident aliens (NRA) that have been allocated effectively connected income. Currently, each NRA partner is subject to withholding in excess of the tax that will ultimately result, and must independently file Form 1040NR, U.S. Nonresident Alien Income Tax Return. A composite NRA partner filing, such as has been long and widely used by states that impose state-level income taxes, would enhance both proper taxpayer compliance and the IRS's ability to review and audit compliance, by giving it a single point of contact for questions and other NRA taxpayer contacts. This will reduce the burden and cost of compliance by NRA partners, and the administrative burden and costs on the IRS.

- Clarify and relax the definition of a foreign entity for purposes of section 6038D. Temp. Reg. § 1.6038D-1T(a)(10) defines foreign entities by reference to Treas. Reg. § 1.1471-1(b)(132). We recommend, solely for purposes of section 6038D, that captive insurance companies that have made elections under section 953(d) be treated as U.S. companies without the further requirement of being regulated by a state-based insurance regulator.

- Coordinate and reverse the timing of taxation under Posed Regulation § 1.1411-10. Under the proposed regulations, the section 1411 tax is imposed on Subpart F and PFIC income when income is repatriated rather than when the income is taxed for Chapter 1. There is elective treatment under the proposed regulations to impose section 1411 tax when the income is taxed for Chapter 1. The default ordering under the proposed regulation creates significant taxpayer recordkeeping burdens, basis differences between Chapter 1 and section 1411 and adds an enormous amount of complexity for the average taxpayer. We recommend that the default rule be to impose section 1411 tax at the same time the income is taxed for Chapter 1 with elective treatment to impose section 1411 tax on repatriation.

- Clarification and alignment is requested on the treatment of Subpart F and PFIC income (unless a QEF election is made) for purposes of Chapter 1 and section 1411. IRS and the courts have long held that Subpart F and PFIC inclusions are other income and not dividend income. Proposed Regulation § 1.1411-10 is inconsistent with Notice 2004-70 and Rodriquez, 137 TC 14, 12/7/2011.

- Guidance is requested on whether a distribution from a CFC is eligible for the "ordinary course of a trade of business exception" to the section 1411 tax.

Foreign Related Trust and Estate Tax Issues

7. In conjunction with Item #2 on the trust and estate suggestions, section 1411(e) exempts a non-resident alien (NRA) trust beneficiary from the new Medicare surtax. Guidance is needed to allocate a trust's net investment income included in DNI between U.S. and NRA beneficiaries for proper reporting of current year distributions. We assume that the net investment income included in DNI would be allocated between U.S. and NRA beneficiaries in the same manner as other allocations of income and expense among beneficiaries, whether U.S. or foreign; however, clarity on this would be helpful.

8. Guidance is needed on issues relating to foreign trusts and the HIRE Act. [Note: See AICPA comments to Treasury and IRS on this issue submitted on March 28, 2011.]

9. Further guidance is needed on issues relating to foreign trusts and the Foreign Bank Account Report (FBAR). [Note: See AICPA comments on this issue submitted to FINCEN, Treasury, and IRS on November 19, 2010 and November 16, 2009.]

10. A change in the due date of Form 3520-A, Annual Information Return of Foreign Trust with a U.S. Owner, is requested from March 15 to April 15, to coincide with the due date for calendar year filers of related returns. If a change in the due date is not possible, then an extension or penalty relief is requested for taxpayers who file by April 15. In addition, IRS should consider adding a box to Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, to permit an extension of time to file Form 3520 in cases where the beneficiary's income tax return (Form 1040 and Form 1040NR) is not going to be extended. [Note: See AICPA comments to IRS on this submitted on June 12, 2008, March 3, 2008, January 31, 2007, and June 17, 2003. This change in the Form 3520A due date is included in proposed legislation, S. 420, introduced 2/28/13 by Senators Enzi and Tester, and H.R. 901, introduced 2/28/13 by Rep. Jenkins, as well as in Rep. Camp's March 12, 2013 House Ways and Means Committee small business tax reform discussion draft and the Senate Finance Committee March 21, 2013 tax reform options paper on simplifying the tax system for families and businesses.]

11. The current tax reporting on Form 1040NR for foreign non-grantor trusts (and foreign grantor trusts with a U.S. owner) is extremely difficult because the IRS form is not designed for fiduciary tax return reporting. IRS instructions direct the preparer to "change the form" for Subchapter J provisions, but attempts to do so result in inconsistent or inadequate changes and lead to return processing errors and confusion. The creation of a new Form 1041NR, which could include information currently reported on Forms 3520 and 3520-A, would eliminate confusion and mistakes in processing returns and would enhance tax compliance

filing requirements. [Note: See AICPA comments to IRS on this submitted on September 22, 2008, March 3, 2008, and January 31, 2007.]

12. Guidance is needed on whether a foreign grantor trust with a U.S. grantor is required to file Form 1041, U.S. Income Tax Return for Estates and Trusts, or Form 1040NR and whether a foreign grantor trust with a foreign grantor and some U.S. income is required to file Form 1041 or Form 1040NR.

13. Guidance is needed on the reporting of and recognition of gain under the expatriation mark-to-market rules in section 877A, including guidance on the interplay of sections 877A and 684, relating to a transfer to a foreign estate or trust.

14. Guidance is needed on how the GST tax applies to grandfathered domestic trusts that become foreign trusts. This issue may be analogous to a GST-grandfathered trust that migrates from one state to another; thus, similar rules and safe harbors should be considered.

15. Guidance is needed regarding several aspects of section 2801.

    - Guidance is needed regarding reporting the receipt of a “covered gift or bequest” and the payment of tax thereon required under section 2801(a). While the IRS has stated in Notice 2009-85, 2009-45 IRB 598, that satisfaction of the reporting and tax obligations for covered gifts or bequests will be deferred pending the issuance of guidance, the longer the delay, the longer the undue burden on those who are required to comply with section 2801(a). This guidance should also include the determination of the reduction of this liability by a credit for the payment of foreign gift or estate taxes on a covered gift or bequest under section 2801(d).

    - Guidance is needed regarding the making of an election by a foreign trust to be treated as a domestic trust under section 2801(e)(4)(B)(iii). In particular, guidance is needed regarding the treatment and reporting of the section 2801 tax for transfers under section 2801(e)(4). Also, neither section 2801(e)(1) nor the legislative history discusses how property can be acquired “indirectly” by gift or by an indirect transfer by a decedent for estate tax purposes. For a covered gift or bequest made to a domestic trust, the section 2801 tax applies in the same manner as if the trust were a U.S. citizen and the tax must be paid by the trust. Under section 2801(e)(4)(B)(iii), an election can be made to treat a foreign trust as a domestic trust for purposes of the transfer tax on covered gifts and bequests. Guidance is needed on whether the foreign trust should withhold the section 2801 tax in the distribution(s) to the beneficiary.

Further, section 2801 does not provide any provisions on how to determine whether a distribution from a foreign trust is "attributable to a covered gift or bequest," where the trust includes other property in addition to the property received in the covered gift or bequest. Guidance is needed on this issue.

16. Guidance is needed as to what qualifies as a "reasonable period of time" for a U.S. grantor or beneficiary of a foreign trust to pay the trust the "fair market value" (FMV) for the "personal use" of trust property under section 643(i)(2). This guidance should also include the determination of the proper FMV measurement and whether "de minimis" amounts can be such a small amount as to make accounting for them unreasonable or administratively impractical. "Safe harbor" guidelines to administer this new law also would be appreciated. For example, a grantor or beneficiary might personally maintain landscaping requirements (at no compensation) for a rental property owned by a foreign trust, but have little or no personal use of the property during the year. [Note: See AICPA comments to IRS, submitted March 28, 2011.]

17. Regulations are needed to enhance guidance in Notice 2009-85 regarding the reporting of tax withholding and payment of these taxes by trustees to the IRS. Such guidance is needed as to the appropriate forms and reporting on applicable tax returns. Guidance on possible "expedited" procedures for successful receipt of a private letter ruling for an expatriate to determine the value of his or her interest in the trust would be appreciated. This guidance should also define "adequate security" for a "tax-deferred agreement" for the covered expatriate's return under section 877A(b).

18. Regulations are needed under section 6677 regarding the failure to file information with respect to certain foreign trusts. The HIRE Act amended section 6677, but guidance is not adequate in Notice 97-34, the only IRS guidance on making a determination on penalties under section 6677. New recently designed letters, as described in IRS memorandum SBSE-20-0709-016, provide determination letters based upon a review of a taxpayer's compliance with section 6677, but taxpayers need regulations to provide them with guidance before the applicable letter is issued.

IRS Practice and Procedures Committee (Kathy Petronchak, Chair, (202) 758-1480, kpetronchak@deloitte.com; or Kristin Esposito, AICPA Technical Manager, (202) 434-9241, kesposito@aicpa.org.) NOTE: Comments are listed in priority order.

1. The Service is phasing in the Modernized e-file (MeF) program to handle the electronic filing of Forms 1040 returns. We recommend that the IRS issue guidance and expand the capability of the MeF program to accept amended returns, claims for refund, and various supporting schedules.

2. In general, a correspondence examination involves an individual or small business taxpayer receiving a letter from the IRS requesting the taxpayer to address a few limited issues about the tax return; often focusing on credit or deduction issues. Unfortunately, many taxpayers (when receiving the letter) either: (a) assume they made a mistake on their return and quickly send in a check to cover the IRS's computation of the underpayment of taxes; or (b) ignore the response deadline set out in the Service's letter, which is often 30 days. If the IRS's letter is ignored, the Service's computers automatically send out the notice of deficiency to the taxpayer.

According to Treasury Inspector General for Tax Administration (TIGTA) Report (February 18, 2011, Reference number 2011-30-016), the IRS has made significant improvements in its handling of correspondence cases. Nevertheless, TIGTA found that the IRS continued to make errors based on a statistical sampling of 62 cases, including circumstances where IRS employees did not always take into account taxpayer correspondence before closure of the case.

With the IRS's increasing reliance on correspondence audits as the primary procedure for examining taxpayers' returns, the AICPA recommends that Treasury and IRS issue additional guidance (in the form of more plain-language publications) for individual and small business taxpayers. We also recommend that a webpage be set up at irs.gov dedicated to correspondence audits. Implementation of these suggestions should contribute to an increase in tax compliance and respect for the tax administration process by taxpayers. [Note: See AICPA testimony provided to the IRS Oversight Board on February 28, 2012.]

3. Section 6662A imposes an accuracy-related penalty on any reportable transaction understatement attributable to a listed transaction or a reportable avoidance transaction for taxable years ending after October 22, 2004. We recommend that Treasury issue regulations under section 6662A which addresses (among other matters): (a) the definition of a "reportable transaction understatement;" (b) coordination of the reportable transaction understatement penalty with the substantial understatement penalty, particularly when multiple years and both penalties are involved; (c) coordination of the reportable transaction understatement penalty with the accuracy-related penalty on underpayments; and (d) application of the penalty (if any) to net operating loss ("NOL") carryback and carryover years.

4. Under section 6662A, if a partnership fails to properly disclose a reportable transaction and the transaction creates a reportable transaction understatement, the partners of the partnership can find themselves liable for a section 6662A penalty with no avenue to challenge the penalty because they did not make the required disclosure under Treas. Reg. § 1.6011-4, even though the partners might never

have been aware of the transaction creating the understatement. Accordingly, we recommend that guidance be issued under section 6662A to address the application of the penalty to partnerships and partners'

5. Treas. Reg. § 1.6011-4(b)(4) addressed the requirement for a statement disclosing participation in transactions with contractual protections. T.D. 9046 amended these regulations to exclude "tax insurance" from the definition of "transactions with contractual protection". We recommend that the IRS clarify in the instructions for Form 8886, Reportable Transaction Disclosure Statement, line 7b that a description for tax result protection (which includes "insurance company and other third party products commonly described as tax result insurance") with respect to the transaction is not required to be included in the description.

6. Given the mandate for tax return preparers to e-file most Forms 1040 and 1041, many more tax return preparers will be required to obtain an EFIN to participate in the e-file system as an electronic return originator (ERO). However, unlike the PTIN rules, a taxpayer with any outstanding account balance (even if the taxpayer disputes the account balance) cannot obtain an EFIN even if that taxpayer is diligent in engaging with the IRS to work through the issues, is a taxpayer that is a reputable tax advisor, and has a history of compliance with the tax laws, and the individual(s) from the taxpayer who will be named as responsible parties on the EFIN application have a PTIN. The inability to obtain an EFIN under these circumstances is unfair, particularly since the statute requires that the practitioner participate in the e-file system. Although the IRS has procedures that allow the preparer to prepare and a taxpayer to file a paper return in these circumstances, the limit on a preparer's ability to obtain an EFIN undermines the e-file mandate. We recommend that the IRS consider coordinating the rules for obtaining an EFIN with the rules for obtaining a PTIN. Such coordination would not only allow PTIN-registered preparers the ability to e-file, but will reduce burden and duplication of effort on the part of the preparer and the IRS. With the current preparer e-file mandate in effect, the AICPA recommends the issuance of immediate guidance to address this matter.

Partnership Taxation Technical Resource Panel (William O'Shea, Chair, (202) 758-1780, woshea@deloitte.com; or Eileen Sherr, AICPA Senior Technical Manager, (202) 434-9256, esherr@aicpa.org.) NOTE: Comments are listed in overall priority order and are additionally segregated into sections designated as Top Priorities and Lower Priorities.

TOP PRIORITIES

1. Expanded guidance is needed under the principles of Revenue Rulings 99-5 and 99-6.

Revenue Ruling 99-5

Guidance related to Revenue Ruling 99-5 is needed in the following areas:

- The amount of the LLC's liabilities that is included in the seller's amount realized on the deemed asset sale that occurs under Rev. Rul. 99-5, Situation 1.

- The treatment of the liabilities owed by the LLC to its single owner upon the formation of the partnership in Rev. Rul. 99-5, Situations 1 and 2 (springing liabilities).

- The treatment of transfers that are not described in Rev. Rul. 99-5 Situations 1 and 2, but which result in the conversion of the single-member LLC to a partnership.

Revenue Ruling 99-6

Guidance related to Revenue Ruling 99-6 is needed in the following areas:

- The amount of the LLC's liabilities that are considered assumed by the buyer (a) as part of the purchase of the selling partner's interest in the LLC and (b) as part of the buying partner's liquidating distribution from the LLC.

- The amount of the LLC's assets that are considered acquired by the buyer (a) from the selling partner, and (b) as part of the buying partner's liquidating distribution from the LLC.

- The deemed extinguishment of any liabilities of the LLC to the acquiring partner that results from the merger of the debtor-creditor relationship which occurs upon the termination of the partnership.

- Application of the section 704(c)(1)(B) and section 737 "mixing bowl" rules to the acquiring partner with respect to the deemed liquidating distributions that occur as part of the Rev. Rul. 99-6 construct.

- Application of the section 751(b) "disproportionate distribution" provisions to the acquiring partner with respect to the deemed liquidating distributions that occur as part of the Rev. Rul. 99-6 construct.

- The treatment of transfers that are not described in Rev. Rul. 99-6, Situations 1 and 2, but which result in the conversion of the partnership to a disregarded LLC.

- Application of Rev. Rul. 99-6 to interest over partnership merger transactions. Such guidance should describe what constitutes a merger or a division under section 708(b)(2). In the preamble to the regulations issued in 2001, the IRS declined to provide a precise definition. Nevertheless, it would be helpful if the IRS provided some examples showing mergers vs. non-mergers. Further, such guidance should address what constitutes a continuation under section 708(b)(1)(A) when one or more historic partner(s) continue in the new partnership.

2. Guidance is requested on the meaning of partners' interest in the partnership in connection with the use of targeted allocations under section 704(b), including under what circumstances the targeted allocations would qualify under the economic effect equivalence test under the regulations. Specifically the guidance should address the following:

   - Guidance is needed to determine the types of circumstances in which a liquidation of a partnership interest that is not in accordance with the partner's capital account balance meet the economic effect equivalence test. For example, many partnerships with target capital account allocation provisions maintain section 704(b) capital accounts, and allocate section 704(b) profits and losses to the capital accounts in a manner that the capital accounts equal the amounts that would be distributed to the partner if the partnership liquidated at book value and distributed its assets to the partners (a hypothetical liquidation approach). However, these agreements may not contain a deficit restoration obligation. Accordingly, under what circumstances do such allocations meet the economic effect equivalence test in the absence of a deficit restoration obligation provided in the partnership agreement? Further, if such agreements contain a qualified income offset provision, would these meet the economic effect equivalence test and thus be considered to be in the safe harbor for economic effect for the year in question (*e.g.*, for purposes of section 514(c)(9)(E))?

   - Guidance is requested with respect to whether the hypothetical liquidation approach is required to determine the manner in which the partners have agreed to share items of income, gain, loss deduction or credit under the "partners' interests in the partnership" (PIP) test in Treas. Reg. § 1.704-1(b)(3), in the event the partnership does not liquidate based on positive section 704(b) capital accounts (*e.g.*, a target allocation agreement or a waterfall distribution agreement). Additionally, in cases where the partnership uses a hypothetical liquidation approach, guidance is needed to address whether the allocation of gross items of income, gain, loss or deduction is required in order to maintain capital account balances that equal the amount partners would receive in a hypothetical liquidation, in the event the partnership agreement provides for the allocation of *net* income or *net* loss. Specifically, if a partnership admits a preferred partner that is entitled to a preferred return during a year in which the partnership's net income is not at least equal to the preferred return accruing during the tax year, must the partnership allocate gross items of income or gain to the preferred partner to adjust the preferred partner's capital account to the amount he would receive if the partnership liquidated at the end of the year for section 704(b) book value even though the agreement adopts a net income or loss allocation scheme, or can the partnership allocate net income only?

As a simple example, assume that a partnership has two partners, A and B. The AB partnership was formed with A contributing $90 for 90 percent of the common interests in the partnership and B contributing $100 for 100 percent of the preferred interests in the partnership and $10 for 10 percent of the common interests. The preferred interest is perpetual and cumulative preferred paying (or accruing) at a 10 percent annual rate. The partnership agreements adopts a forced allocation schedule that allocates *net* income or loss to the partners in a manner to force the partners ending section 704(b) capital accounts to equal the amounts the partners would receive if the partnership were to sell all of its assets at their section 704(b) book value, pay all of its liabilities (assume none here) and liquidate the partnership pursuant to a cash liquidation waterfall. Assume that in the first year the partnership *net* income of less than $10. Thus, there is not sufficient *net* income to satisfy the perpetual, cumulative preferred return for that tax year. Also, if the partnership were to liquidate at the end of that tax year, some amount of A's capital would be paid to B to satisfy the shortfall in net income. Note however, that the partnership does not expect to liquidate at the end of the first year (and in fact does not liquidate), and the partnership fully expects that over the life of the partnership there will be enough net income to satisfy the preferred return. Under these facts, how is the net income of less than $10 allocated? Does PIP require the partnership to allocate *gross* items of income, gain, loss or deduction to account for the preferred return entitlement, even though the partnership agreement adopts a *net* income allocation scheme? Further, if there is an overall net loss, or not enough gross income to allocate to the preferred return partner, are guaranteed payments implicated?

- Guidance is requested to address whether the special allocation of nonrecourse deductions will be respected where a partnership adopts a targeted allocation provision.

3. Guidance is needed regarding tax credit partnerships. As a result of the Third Circuit opinion in Historic Boardwalk Hall, guidance is needed concerning when tax equity investors will be treated as partners who can share in energy tax credits. IRS should consider updating and expanding Rev. Proc. 2007-65 beyond wind credits to provide guidance on all federal income tax credit partnerships.

4. Guidance is requested regarding the tax treatment to both the partnership and the partner when there is a cancellation of a partner loan. Specifically, guidance is requested on the manner in which the loan is cancelled (e.g., whether the cancellation of the debt occurs at the partnership level or whether the partner can be viewed as assuming the partnership's liability, then cancelling the loan, under an approach similar to the principles applied in Arthur L. Kniffen v. Commissioner, 39 T.C. 553, 561 (1962), acq., 1965-2 C.B. 3. If the cancellation occurs at the partnership level, guidance is requested on the character of the bad debt loss to a partner (e.g., whether the business of the partnership can be attributed to the creditor-partner to prevent a character mismatch under section 166).

5. Guidance is needed to clarify whether the section 752 regulations defining nonrecourse and recourse debt are applicable in determining the classification of partnership indebtedness for purposes of section 1001. The current economic downturn has resulted in an increase in the number of federal tax partnerships that are entering into arrangements with their creditors to work out their indebtedness. Depending on whether the partnership liability is "nonrecourse" or "recourse" for section 1001 purposes, a foreclosure by a creditor on partnership property results in the partnership recognizing (a) the amount realized on the sale or disposition of property subject to nonrecourse debt, or (b) the amount realized plus cancellation of indebtedness (COD) income on the sale or disposition of property subject to recourse debt. None of section 1001, the regulations thereunder, or IRS rulings address the characterization of partnership debt as "recourse" or "nonrecourse" for this purpose. This uncertainty is exacerbated by the prevalence of (a) limited liability companies taxed as partnerships (a situation that was not in existence when the section 1001 regulations were written) which have debts that are recourse to the entity's assets under state law, but for which no member has liability and (b) partnerships that hold multiple properties subject to recourse debts in separate disregarded entities.

6. The AICPA supports the Administration's Fiscal Year 2014 Budget proposal to repeal section 708(b)(1)(B). If that legislation is enacted, the issues below regarding technical terminations would be resolved going forward, and the below guidance projects would not be necessary. However, until that legislation is enacted, the below guidance projects would be helpful. We are pleased that the first item below regarding treatment of unamortized organizational and start-up costs upon a technical termination is now included in the 2012-2013 IRS Priority Guidance Plan as item 9 on the partnership projects, and request that the project be expanded to include the other two related technical termination guidance issues below.

- Guidance is requested on the treatment of unamortized organizational costs under section 709 and start-up costs under section 195 upon a technical termination. Are such costs written off because the tax entity terminates or are they treated as a property contribution to the new partnership under section 721 so that amortization continues?

- Guidance is requested on the treatment of partnership level section 481 adjustments. Several unresolved issues include guidance on (1) allocation of the 481 adjustment where there has been a change in ownership, (2) the impact of the 481 adjustment on a section 754 basis adjustment, (3) the treatment of a 481 adjustment on a section 708(b)(1)(B) termination, and (4) the treatment for purposes of 751.

- Guidance is requested in circumstances where partnerships have inadvertently filed a late short period return and associated Schedules K-1 due to a technical termination under section 708(b)(1)(B). It is common for partnerships to be unaware of events that would cause a technical termination until after the due date of the tax return for the short year.

7. Guidance is requested on the treatment of the contribution of the interests in an existing partnership to a newly-formed partnership (whose owners are comprised of all or some of the partners of the existing partnership) such that the existing partnership becomes a disregarded entity held by the newly-formed partnership. Specifically, guidance is requested on whether the existing partnership terminates under section 708(b)(1)(A), or whether the newly-formed partnership is considered to be a continuation of the existing partnership. Such guidance should address the continuity of ownership required to treat the newly-formed partnership as a continuation of the existing partnership (e.g., whether the newly-formed partnership is a continuation of the existing partnership under section 708(a) if less than fifty percent of the partners of the existing partnership continue their interest in the new partnership, or if the continuing partners of the existing partnership hold less than 50 percent of the interests in the newly-formed partnership). Additionally, guidance is requested on the manner in which the federal income tax and employment tax returns for the newly-formed partnership and the existing partnership should be filed in situations where the newly-formed partnership is treated as a continuation of the existing partnership. In particular, guidance should be provided to whether the Form 1065, U.S. Return of Partnership Income, for the newly-formed partnership should be filed with the employer identification number of the existing partnership or whether the newly formed partnership should apply for and use a new employer identification number.

LOWER PRIORITIES

8. Guidance is requested with respect to partnerships that use the special aggregation rule for securities partnerships under Treas. Reg. § 1.704-3(e). Specifically:

- Expanded guidance is requested under Treas. Reg. § 1.704-3(e)(4) to permit the aggregation of assets for certain partnerships that do not qualify for section 704(c) aggregation under the provisions of Treas. Reg. § 1.704-3(e)(3) or under Rev. Proc. 2007-59. Such guidance would expand the requirements to allow a greater number of taxpayers the ability to aggregate in appropriate situations.

- Guidance on the methodology of applying section 743 for partnerships using the special aggregation rule for securities partnerships under Treas. Reg. § 1.704-3(e). Guidance would be expected to include a similar aggregation rule for allocating the section 743 adjustment under section 755 and a methodology for determining when the section 743 adjustment is taken into account.

- Guidance should be issued that identifies certain forward section 704(c) circumstances where aggregation can be used without obtaining a private letter ruling. Such guidance would allow eligible partnerships to aggregate built-in gains and losses from contributed property with built-in gains and losses from revaluations in appropriate circumstances (such as in the case of a merger of eligible partnerships), or provide automatic consent procedures. Permission for such aggregation may currently be obtained only through a Private Letter Ruling request.

9. Guidance is needed to address the revaluation of partnership assets where the assets were either contributed to the partnership or previously revalued by the partnership. This guidance should include (1) how the multiple layers under section 704(c) are maintained; (2) the impact on minimum gain calculations under section 704(b); (3) the impact on nonrecourse debt allocations under section 752; and (4) the treatment of debt obligations including Treas. Reg. § 1.752-7 in a revaluation.

10. Guidance is requested with respect to publicly traded partnerships. Specifically:

    - Guidance is requested granting optional relief from the "single basis in a partnership" rule of Rev. Rul. 84-53 for owners of interests in publicly traded partnerships, similar to the special exception in the holding period rules of Treas. Reg. § 1.1223-3(c)(i) for publicly traded partnerships.

    - Guidance is requested granting relief to publicly traded partnerships to use simplifying assumptions for purposes of calculating section 743 adjustments and section 751(a) amounts upon sale. Such relief would allow the partnership to use the same price for all trades in a particular month to calculate the section 743 adjustments of transferees as opposed to actual purchase price as required in the regulations. Such relief is necessary for ease of administration and due to the lack of precise trading data. Similar simplifying conventions would be used for calculating the gain on the hypothetical sale of "hot assets" under section 751(a) to transferors.

11. Guidance is requested under section 6063 defining the circumstances in which an originally filed partnership tax return will be considered validly signed by a partner, within the meaning of this statute. Section 6063 and the regulations thereunder require that the partnership tax return be signed "by any of its partners." However, the instructions to Form 1065 appear to narrow the pool of valid signatories by indicating that the return must be signed by a "general partner or LLC member manager." Further, the IRS has indicated in Pub. 3402 and in informal advice that limited partners cannot sign the partnership tax return (GCM 38781; FSA 0556). A valid signature is a prerequisite to the valid filing of an income tax return (Agri-Cal Venture Associates, v. Commissioner, T.C. Memo 2000-271; Burford Oil Co. v Commissioner, 153 F.2d 745 (5th Cir. 1946); Elliott v Commissioner, 113 T.C. 125 (1999)). Because the tax ramifications of failure to timely file a return are significant, the IRS should clarify in one set of guidance the signature requirements for signing a partnership tax return. In particular, such guidance should address if and when a limited partner or non-member manager LLC member can sign the partnership return, what partners are appropriate signatories in a non-member managed LLC, and what partners can sign in situations where the entity is a foreign eligible entity classified as a partnership. Further, in cases where the appropriate partner signatory of a partnership return is itself another entity classified as a partnership, the guidance should address whether an authorized officer of such entity partner can sign the lower-tier partnership return in its capacity as an officer of the partner entity (e.g., if an LLC is the general partner of a partnership, can an authorized officer of the LLC sign the partnership return on behalf of the LLC as general partner of the lower-tier partnership).

12. Guidance is requested to address the constructive ownership rules applicable for section 6038 as they apply particularly to domestic partnerships. Currently, the section 958(b) and section 318(a)(3)(A) constructive ownership rules cause a domestic partnership to be the constructive owner of a controlled foreign corporation (CFC) held by a domestic corporate partner, *regardless of the percentage ownership such corporate partner has in the partnership*. As such, the partnership appears to have a Category 5 filing requirement to file Form 5471 with respect to all CFCs held by such corporate partner. The rules do not make sense where the U.S. partnership is not part of the U.S. corporate partner's affiliated group, and where the U.S. partnership would not have any income inclusions under section 951 with respect to the CFCs held by the corporate partner. Further, the rules do not contain any administrative relief from this filing requirement when, for example, there is more than one U.S. person that has the same filing requirement (compare the administrative relief available for multiple Category 4 filers. Because failure to file a required Form 5471 carries with it punitive results for U.S. partnerships that may not even be aware of the filing

requirement and who may not be able to obtain the information necessary to file such forms from its domestic corporate partners – from monetary penalties to an open statute of limitation – the AICPA is requesting guidance that provides administrative relief.) We applaud the changes to the 2012 Form 5471 that were made in an effort to relieve the partnership from the general filing requirement in circumstances where the partner is appropriately compliant with its Form 5471 filing obligations. Nevertheless, the AICPA requests further guidance be issued that provides that the partnership cannot be subject to penalties for failure to file in all circumstances (e.g., where the partner fails to meet its own filing obligations).

13. The AICPA continues to believe that guidance is needed on the treatment of limited liability company members (and limited partners in light of recent judicial rulings) under section 1402(a)(13). Some taxpayers aggressively avoid classifying LLC income as earnings from self-employment, while others may be overly conservative in this regard. Without guidance, widespread inconsistency will continue to flourish and practitioners trying to do the "right" thing have difficulty retaining clients who prefer an overly aggressive position. While the AICPA continues to believe that the Service should withdraw and re-propose or finalize existing regulations addressing this important issue, our understanding is that such guidance will only be forthcoming following legislative action in this area.

S Corporation Taxation Technical Resource Panel (Chris W. Hesse, Chair, (612) 397-3071, chris.hesse@cliftonlarsonallen.com; or Jason Cha, AICPA Technical Manager, (202) 434-9231, jcha@aicpa.org.) NOTE: Comments are listed in overall priority order and are additionally segregated into sections designated as Top Priorities and Lower Priorities.

TOP PRIORITIES

1. Guidance is needed regarding the inability to utilize certain suspended passive activity losses upon redemption. Section 469(g) generally allows for the utilization of all suspended passive activity losses that have been carried forward when a taxpayer disposes in a taxable transaction of his entire interest in a passive activity. This rule does not apply, however, when the sale of S corporation stock is to a related party described in sections 267(b) and 707(b)(1). When the related party exception applies, the loss is deferred until the party acquiring such stock interest in the passive activity disposes of it to a party that is unrelated to the initial selling taxpayer. In the case of a redemption of S corporation stock, the second disposition can never be achieved because the stock redeemed no longer exists for federal income tax purposes. It is not possible to trace the redeemed stock to a subsequent disposition.

The legislative history to the provision does not appear to contemplate this situation. Although the statute treats redemptions of corporations differently than redemptions of partnership interests with regard to the ability to recognize realized losses on redemption (see section 707(b)(1) allowing for losses on redemption of partnership interests; and see section 267(b) and Revenue Ruling 57-387 for disallowance of loss on redemption of corporate stock), we believe it appropriate that all suspended losses be allowable upon a complete redemption of interests in a pass through entity. Suspended passive losses do not result from a sale or exchange of property between related parties, but rather from true economic losses. The sale transaction solely governs the timing of taking the loss into account. If such losses were not allowed upon a complete redemption in a pass through entity, true economic losses would never be recognized as the provisions of section 469(g) could never be satisfied.

2. We recommend that the guidance from PLRs 200308035 and 201015019 be incorporated into a revenue ruling. Specifically, guidance is requested concerning whether a second class of stock is created by an S corporation's pro rata distributions made to pay: (1) taxes in year one; (2) redemptions in year two; (3) additional taxes in year three for an amendment of its year one tax return; and (4) subsequent distributions to pay additional year one taxes.

   PLR 201017019 provides that there is only one class of stock when an S corporation pays distributions to its shareholders based on the apportionment of taxable income for a given period. The distribution plan discussed in the ruling also provides that if a subsequent audit increases taxable income for a prior period, the corporation may make distributions to shareholders in proportion to their relative shares of taxable income during the prior period. The payment policy described in this ruling appears to relate to distributions on specific dates or events, and there is at least an implication that there may be more than one distribution, subject to different formulae, within a single corporate taxable year.

   Additionally, guidance is needed to confirm that an S corporation can simultaneously make both pro rata distributions according to current stock ownership and other distributions that meet the varying interest rule of Treas. Reg. § 1.1361-1(l)(2)(iv) without creating a second class of stock.

3. Clarification is needed regarding the ordering rule for adjustments to AAA when ordinary and redemption distributions are made in the same year and an ordinary distribution occurs after the redemption distribution. Under Treas. Reg. § 1.1368-2(d)(1)(ii), AAA is adjusted first for ordinary distributions and then for redemptions. The regulations provide an example where the redemption occurs later in the year than the ordinary distribution, but does not provide an example where the redemption occurs prior to the ordinary distribution. Since the redemption distribution is based on the AAA amount as of the date of the redemption, the rule is not clear in the case of a post-redemption ordinary

distribution. The regulation simply says to adjust first for ordinary distributions but does not make a distinction for those ordinary distributions that are before or after redemption. One could interpret the rule either way. Reducing the AAA balance for all ordinary distributions regardless of the timing relative to the redemption provides the best answer in most circumstances. Since a complete redemption is a sale or exchange transaction, the presence of AAA is irrelevant for purposes of determining the shareholder's gain or loss on the redemption. Allocating more AAA to redemptions by ignoring post redemption distributions doesn't benefit the redeemed shareholder while it leaves less AAA for the post redemption distribution to be recovered tax free by the recipient shareholders. We specifically request an example where ordinary distributions are made subsequent to a redemption and how AAA is impacted in that situation. Such guidance could be issued by either modification of the regulation or by revenue ruling.

4. Treasury Reg. § 1.1361-5 should be updated to reflect the addition of clause (ii) (relating to termination of a QSub by reason of the sale of QSub stock) to section 1361(b)(3)(C) made by section 8234 of P.L. 110-28. This can be accomplished in any of three ways: (1) delete the obsolete portion of existing regulation; (2) add a sentence to indicate that the old rules apply only for years before the effective date of the changes; or (3) revise and expand the regulations to indicate that the old rules apply to years before the effective date of the changes and also set forth new rules that apply for years after the effective date of the changes.

LOWER PRIORITIES

5. Guidance is needed as to when, for alternative minimum tax purposes, S corporations will have attributes which will be different for regular tax and alternative minimum tax purposes. For example, does an S corporation have an Accumulated Adjustments Account for alternative minimum tax purposes which would differ by the adjustments of sections 56, 57 and 58 from the Accumulated Adjustments Account for regular tax purposes? Assuming there are Accumulated Adjustment Accounts kept for each type of tax, if distributions in excess of the regular tax and AMT Accumulated Adjustments Accounts are made by an S corporation with accumulated earnings and profits, how much is taxable to the recipient shareholder for regular tax purposes and how much for AMT purposes? As more and more taxpayers become subject to the AMT, it is increasingly important for taxpayers to have guidance on how the regular tax and AMT interface with respect to common transactions.

6. A revenue procedure for the permissible electronic distribution of Schedules K-1 (Form 1120S, U.S. Income Tax Return for an S Corporation) should be issued. (See recently released Revenue Procedure 2012-17 which provides guidance on partnerships that issue electronic Schedules K-1.)

7. Guidance is needed as to whether a state tax refund attributable to the S-portion of an ESBT is allocated to the S-portion.

8. Guidance is needed regarding the temporary shortening of the recognition period under section 1374(d)(7)(B). Specifically, we request that guidance be issued excluding recognized built-in gain that is deferred in 2009, 2010 or 2011 (and beyond, should the provision be further extended) as a result of an income limitation or installment sale and later recognized during the recognition period under section 1374(d)(2)(B) or under the installment sales rules not be subject to tax. In addition, we request clarification as to (1) what happens if a section 444 election is made during the recognition period resulting in a change in the tax year; (2) whether the "7th taxable year" for years beginning in 2009 or 2010 (per American Recovery and Reinvestment Act of 2009) or "5th taxable year" for years beginning in 2011 (per Small Business Jobs Act of 2010), as appropriate, or the "stub-period" months as defined in the regulations determines the temporary end of the recognition period; and (3) whether the temporary rule applies to regulated investment companies and real estate investments trusts.

Tax Methods and Periods Technical Resource Panel (Carol Conjura, Chair, at (202) 533-3040, cconjura@kpmg.com; or Jason Cha, AICPA Technical Manager, (202) 434-9231, jcha@aicpa.org.) NOTE: Comments are listed in priority order.

1. Issue additional guidance on capitalization under section 263:

   - Issue final regulations and industry specific guidance under sections 162(a), 168, and 263(a) regarding the deduction and capitalization of expenditures for tangible assets. [Note: See AICPA comments to IRS submitted on April 17, 2012 and July 16, 2012.]

   - Issue guidance clarifying the safe harbor method to allocate success-based fees under Rev. Proc. 2011-29, including clarification on the allocation of success-based fees between covered and non-covered transactions, milestone payments applied to the payment of success-based fees, and contingent employee compensation.

   - Issue proposed regulations under sections 263(a) and 167 providing guidance on the treatment of capitalized transaction costs, including safe harbor amortization periods, for certain capitalized costs.

   - Release revenue procedure under section 263(a) regarding the capitalization of cable network property.

   - Release revenue procedure under section 263(a) regarding the capitalization of natural gas transmission and distribution property.

2. Issue additional guidance on capitalization under section 263A:

- Issue final regulations under section 263A regarding the inclusion of negative amounts in additional section 263A costs.

- Issue final regulations under sections 263A and 471 regarding sales-based royalties and sales-based vendor allowances.

- Issue proposed regulations under section 263A for resellers (i) updating rules to reflect changes in retail business practices (including those resulting from technological advances and current trends) that have affected the application and administrability of the existing regulations under section 263A to retailers that transact both on-site sales and sales that are not on-site sales from the same sales facility, and (ii) modifying the definitions of on-site sales, a retail customer, a retail sales facility, a dual-function storage facility, and other terms in Treas. Reg. § 1.263A-3(c)(5)(ii) to reflect current business practices of retailers that transact both on-site sales and sales that are not on-site sales from the same sales facility.

- Issue proposed regulations under section 263A: (i) clarifying definition of costs included in and excluded from the simplified service cost production and labor cost formulas, (ii) clarifying sufficient documentation for classification of activities and departments (e.g., sufficiency of interviews with employees), and (iii) updating examples to reflect more common situations such as an IT department.

- Issue regulations under sections 263A and 702 regarding the treatment of excess depletion.

3. Issue additional guidance on changes in method of accounting:

- Issue revised companion revenue procedures authorizing automatic consent for changing accounting methods under the tangibles regulations.

- Modify certain procedures for obtaining automatic and advance consent to change a method of accounting in Rev. Proc. 97-27. [Note: See AICPA comments to IRS submitted on February 15, 2008.]

- Modify the voluntary accounting method change procedures addressing concerns regarding the "issue under consideration" standard for controlled foreign corporations (CFCs). [Note: See AICPA comments submitted to IRS on July 30, 2012.]

- Issue guidance modifying final regulations and Rev. Proc. 2011-14, as modified by Rev. Proc. 2012-39, concerning procedures for changing accounting methods in non-taxable reorganizations under section 381(a).

- Issue guidance regarding changes in method of accounting for section 174 research and experimental expenses.

4. Issue guidance addressing a taxpayer's eligibility for Rev. Proc. 2004-34, as modified by Rev. Proc. 2011-18, in situations where receipts from gift card sales are never included in financial statement income. [Note: See AICPA comments to IRS submitted on July 18, 2012.]

5. Finalize the regulations under section 471 addressing the retail inventory method. [Note: See AICPA comments submitted to IRS on December 13, 2012.]

6. Issue guidance regarding the relevant factors for determining the tax owner of property for section 199 purposes, including clarification that the standard for benefits and burdens under section 199 should be consistent with the standard for benefits and burdens under section 263A in contract manufacturing situations.

7. Issue guidance regarding the time when a business is considered to start for purposes of section 195.

8. Issue guidance on the deductibility of foreclosure and holding costs incurred by banks for other real estate owned (OREO).

9. Issue guidance under section 6655 regarding corporate estimated tax payments.

10. Issue guidance under section 118 specifically relating to the treatment of refundable and transferable credits and incentives as non-shareholder contributions to capital.

11. Release revenue procedure under section 168(k)(4) regarding election to accelerate carryover AMT credits in lieu of claiming bonus depreciation.

12. Issue guidance under section 179(f) regarding qualified real property.

13. Issue guidance regarding the application of Treas. Reg. section 1.267(b)-1(b) to partners and partnerships.

14. Issue guidance under section 453B regarding nonrecognition of gain or loss on the disposition of certain installment obligations.

15. Issue regulations under section 460 regarding the application of the look-back interest rules to certain pass-through entities with tax-exempt owners.

16. Issue regulations under section 460 regarding home construction contracts and rules for certain changes in method of accounting for long-term contracts.

17. Issue regulations under section 472 regarding the carryover of LIFO layers following a section 351 or section 721 transaction.

18. Issue regulations amending Treas. Reg. section 1.472-8 regarding the IPIC method.

Tax Practice Responsibilities Committee (James W. Sansone, Chair, (847) 413-6912, James.Sansone@mcgladrey.com; or Melanie Lauridsen, AICPA Technical Manager, (202) 434-9235, mlauridsen@aicpa.org.) NOTE: Comments are listed in order of priority.

1. Guidance is needed to provide certain core principles for defining "tax shelter" under section 6662(d), including that the term "tax shelter" is intended to apply to an entity, plan or arrangement involving an abusive application of the federal income tax laws, but that the determination of whether a "tax shelter" exists depends upon all pertinent facts and circumstances. The definition is important for purposes of the taxpayer accuracy-related penalties under section 6662 and 6662A, the tax return preparer penalty under section 6694, the section 7525 federal tax practitioner privilege, and the written tax advice rules contained in Circular 230 (Rev. 8-2011).

2. Little general information is available regarding the investigations of practitioners and the processing of cases by the Office of Professional Responsibility (OPR). In addition, regulation of (and limitation) of practitioners' ability to provide service to taxpayers is also delegated to the Return Preparer Office (RPO) and the office of Electronic Tax Administration (ETA). Guidance or information is therefore needed regarding procedures of OPR and other offices that regulate, sanction and limit practitioners. Such guidance could be in the form of a comprehensive "plain English" publication or other statement of a practitioner's rights in the case of a referral to OPR or action to restrict a practitioner's rights or actions by other IRS offices. This might be done in a publication similar to the current IRS Publication 1, Your Rights as a Taxpayer.

   Relatedly, guidance is needed regarding the safeguarding of the **taxpayer's** rights in an OPR investigation of the **preparer**. To illustrate, to gather evidence against the preparer, the IRS examines the tax returns of the preparer's clients. Those taxpayers may be asked to give testimony about the targeted tax preparer's preparation procedures. In an effort to build a case against the targeted tax practitioner, we are concerned that the OPR investigator may inadvertently compromise the taxpayer's rights in the examination. For example, the OPR investigator may require that the taxpayer accompany the representative to the initial tax interview, contrary to the taxpayer's right to representation as described in IRM 4.10.2.7.5. The IRS may also require, in an affidavit to be completed at the initial interview, that the taxpayer provide answers relating to the tax preparer's procedures. A taxpayer who is under examination at that time may fear reprisal if the affidavit is not completed.

3. Assuming that the proposed amendment of Circular 230 section 10.35 is adopted substantially as proposed, guidance will be needed regarding the criteria that will be used to determine the competence of practitioners subject to Circular 230. Examples of the determination of whether a practitioner demonstrates the required knowledge, skill, thoroughness and preparation are needed by the practitioner community for compliance with this new provision.

4. Additional guidance is needed regarding the imposition of monetary penalties under Circular 230 as amended by section 822 of the American Jobs Creation Act of 2004. [Note: See AICPA comments on Notice 2007-39 regarding this issue, submitted on August 22, 2007.]

5. Guidance, with the opportunity for prior comment, is needed regarding criteria the IRS will use in determining whether to:

   (1) assert a section 6694 preparer penalty;
   (2) refer a matter to OPR, particularly in the case of alleged violations under the section 6694 preparer penalty provisions; and
   (3) sanction or otherwise limit a practitioner in providing tax services by OPR, RPO or ETA.

   Guidance regarding the interpretation of standards to be applied beyond, for example, "assessment of penalties" as an enumerated standard, set forth on page 14 of Publication 3112, to deny a practitioner participation in the e-file program, is essential to provide consistency of application of the standards to limit abuse of discretion by an IRS employee and to adequately inform practitioners of the standards to which they will be expected to adhere.

Trust, Estate and Gift Tax Technical Resource Panel (Frances Schafer, Chair, (202) 521-1511, fwswcs3@comcast.net; or Eileen Sherr, AICPA Senior Technical Manager, (202) 434-9256, esherr@aicpa.org.) NOTE: Items are listed in priority order.

Domestic

1. Final regulations are needed on the portability of the deceased spousal unused exclusion amount under section 2010(c)(4). [Note: See AICPA letter submitted to IRS on September 14, 2012.]

2. Final regulations are needed on the new 3.8 percent tax on unearned income under section 1411(effective January 1, 2013) as it relates to estates and trusts and the Form 1041, including filing requirements, timing of remittances, tax forms and instructions, and any other guidance that will help taxpayers comply with the new law. [Note: See AICPA comments to Treasury and IRS on this issue submitted on May 8, 2013.]

3. A final ruling is needed on the consequences under various estate, gift, and generation-skipping transfer tax provisions of using a family-owned company (private trust company) as the trustee of a trust. [Note: See AICPA pre-release comments on this item submitted on March 29, 2006, and AICPA comments on the proposed revenue ruling, submitted on November 12, 2008.]

4. Regulations under section 6034 should add an administrative exception to the Form 1041-A, U.S. Information Return Trust Accumulation of Charitable Amounts, filing requirement for complex trusts that claim charitable deductions under section 642(c) solely for contributions flowed through to them from partnerships and S corporations. The amendment to these regulations could be done as part of a project to update the section 6034 regulations to reflect the changes made to that section by the Pension Protection Act of 2006. In order to implement this administrative exception as soon as possible, a Notice should be issued stating that regulations will be revised to allow this administrative exception to the Form 1041-A filing requirement for these trusts and that these trusts no longer have to file Form 1041-A. [Note: See AICPA letter submitted to IRS on September 14, 2010 and AICPA letter submitted to Congress on October 19, 2012.]

5. A simplified procedure is needed to obtain an extension of time to elect out of the automatic allocation of the GST exemption to indirect skips and at the end of the estate tax inclusion period, similar to Rev. Proc. 2004-46. Many PLRs have been issued allowing extensions of time to elect out of the automatic rules, but a simplified method for obtaining such extensions without the need for a private letter ruling would benefit taxpayers and the IRS. [Note: See AICPA comments to IRS, submitted June 26, 2007.]

6. Guidance is needed on the ability to split gifts under section 2513 in *Crummey* or similar situations, where the donee spouse has an interest in the trust and others have the ability to withdraw the contributed assets but all the transfers made to the trust during the year may be withdrawn by trust beneficiaries.

   Such guidance is particularly needed in the case of late filing of gift tax returns. Because of the late filing, there is no opportunity to elect out of deemed allocation (i.e., each spouse's GST exemption would be allocated to his or her portion of the transfer) (Treas. Reg. § 26.2632-1(b)(4)(iii), Ex. 5). [Note: See AICPA comments to IRS, submitted June 26, 2007.]

7. Guidance is needed for marital trusts under section 2056(b)(7) similar to Rev. Rul. 2006-26, regarding plans other than IRAs and defined contribution plans (i.e., defined benefit plans and deferred compensation plans).

8. Guidance is needed regarding the appropriate means and timing of GST allocations to pour over trusts from GRAT terminations. Guidance is also needed under section 2632(c)(5)(A)(i) and examples, addressing the application of the GST exemption automatic allocation rules for indirect skips in a situation in which a trust subject to an estate tax inclusion period (ETIP) terminates upon the expiration of the ETIP, at which time the trust assets are distributed to other trusts that may be GST trusts. [Note: See AICPA comments to IRS, submitted June 26, 2007.]

   We appreciate that the 2012-2013 Priority Guidance Plan includes this suggestion.

9. Clarification is needed in the instructions to Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, with regard to Column C in Part 3 of Schedule A as to the election made under section 2632(c) (electing "in and out" of a deemed allocation.) The instructions state that checking the box in Column C applies only for transfers reported on the return. Confusion can result as the instructions provide that, if a prior election has been made with respect to future transfers, the box in Column C should not be checked and no explanatory statement should be filed with the applicable Form 709. One suggestion would be to have an additional column to check if an election was made in a prior year that affects the GST exemption for a transfer made in the current year.

10. Guidance is needed under section 2632(c), regarding the deemed allocation of GST exemption to certain lifetime transfers to GST trusts. In particular, clarification is requested with regard to the exceptions to the definition of a GST trust contained in section 2632(c)(3)(B)(i)-(vi) as well as the exception in the flush language of this section dealing with gift tax annual exclusions. Six types of GST trusts are defined, but there are many gray areas that we would request additional guidance. Finally, until regulations are issued under section 2632(c)(3)(B)(i)(III), as required by such section, we believe this provision has no effect.

11. It would be helpful to harmonize what is necessary to satisfy the adequate disclosure requirements of sections 301.6501(c)-1(e) and -1(f). At a minimum, section 301.6501(c)-1(e) should contain a safe harbor for appraisal reports as exists in section 301.6501(c)-1(f).

Foreign Related

12. In conjunction with Item #2 above, section 1411(e) exempts a non-resident alien (NRA) trust beneficiary from the new Medicare surtax. Guidance is needed to allocate a trust's net investment income included in DNI between U.S. and NRA beneficiaries for proper reporting of current year distributions. We assume that the net investment income included in DNI would be allocated between U.S. and NRA beneficiaries in the same manner as other allocations of income and expense among beneficiaries, whether U.S. or foreign; however, clarity on this would be helpful. [Note: See AICPA pre-release comments on this item submitted on March 29, 2006, AICPA comments on the proposed revenue ruling, submitted on November 12, 2008, and AICPA comments to Treasury and IRS on this issue submitted on May 8, 2013.]

13. Guidance is needed on issues relating to foreign trusts and the HIRE Act. [Note: See AICPA comments to Treasury and IRS on this issue submitted on March 28, 2011.]

14. Further guidance is needed on issues relating to foreign trusts and the Foreign Bank Account Report (FBAR). [Note: See AICPA comments on this issue submitted to FINCEN, Treasury, and IRS on November 19, 2010 and November 16, 2009.]

15. A change in the due date of Form 3520A is requested from March 15 to April 15, to coincide with the due date for calendar year filers of related returns. If a change in the due date is not possible, then an extension or penalty relief is requested for taxpayers who file by April 15. In addition, IRS should consider adding a box to Form 7004 to permit an extension of time to file Form 3520 in cases where the beneficiary's income tax return (Form 1040 and Form 1040NR) is not going to be extended. [Note: See AICPA comments to IRS on this submitted on June 12, 2008, March 3, 2008, January 31, 2007, and June 17, 2003. This change in the Form 3520A due date is included in proposed legislation, S. 420, introduced 2/28/13 by Senators Enzi and Tester, and H.R. 901, introduced 2/28/13 by Rep. Jenkins, as well as in Rep. Camp's March 12, 2013 House Ways and Means Committee small business tax reform discussion draft and the Senate Finance Committee March 21, 2013 tax reform options paper on simplifying the tax system for families and businesses.]

16. The current tax reporting on Form 1040NR for foreign non-grantor trusts (and foreign grantor trusts with a U.S. owner) is extremely difficult because the IRS form is not designed for fiduciary tax return reporting. IRS instructions direct the preparer to "change the form" for Subchapter J provisions, but attempts to do so result in inconsistent or inadequate changes and lead to return processing errors and confusion. The creation of a new Form 1041NR, which could include information currently reported on Forms 3520 and 3520-A, would eliminate confusion and mistakes in processing returns and would enhance tax compliance

filing requirements. [Note: See AICPA comments to IRS on this submitted on September 22, 2008, March 3, 2008, and January 31, 2007.]

17. Guidance is needed on whether a foreign grantor trust with a U.S. grantor is required to file Form 1041 or Form 1040NR and whether a foreign grantor trust with a foreign grantor and some U.S. income is required to file Form 1041 or Form 1040NR.

18. Guidance is needed on the reporting of and recognition of gain under the expatriation mark-to-market rules in section 877A, including guidance on the interplay of sections 877A and 684, relating to a transfer to a foreign estate or trust.

19. Guidance is needed on how the GST tax applies to grandfathered domestic trusts that become foreign trusts. This issue may be analogous to a GST-grandfathered trust that migrates from one state to another; thus, similar rules and safe harbors should be considered.

20. Guidance is needed regarding several aspects of section 2801:

    - Guidance is needed regarding reporting the receipt of a "covered gift or bequest" and the payment of tax thereon required under section 2801(a). While the IRS has stated in Notice 2009-85, 2009-45 IRB 598, that the satisfaction of the reporting and tax obligations for covered gifts or bequests will be deferred pending the issuance of guidance, the longer the delay, the longer the undue burden on those who are required to comply with section 2801(a). This guidance should also include the determination of the reduction of this liability by a credit for the payment of foreign gift or estate taxes on a covered gift or bequest under section 2801(d).

    - Guidance is needed regarding the making of an election by a foreign trust to be treated as a domestic trust under section 2801(e)(4)(B)(iii). In particular, guidance is needed regarding the treatment and reporting of the section 2801 tax for transfers "<u>in trust</u>" under section 2801(e)(4). Also, neither section 2801(e)(1) nor the legislative history discusses how property can be acquired "indirectly" by gift or by an indirect transfer by a decedent for estate tax purposes. For a covered gift or bequest made to a domestic trust, the section 2801 tax applies in the same manner as if the trust were a U.S. citizen and the tax must be paid by the trust. Under section 2801(e)(4)(B)(iii), an election can be made to treat a foreign trust as a domestic trust for purposes of the transfer tax on covered gifts and bequests. Guidance is needed on whether the foreign trust should withhold the section 2801 tax in the distribution(s) to the beneficiary.

      Further, section 2801 does not provide any provisions on how to determine whether a distribution from a foreign trust is "attributable to a covered gift or bequest," where the trust includes other property in addition to the property received in the covered gift or bequest. Guidance is needed on this issue.

21. Guidance is needed as to what qualifies as a "reasonable period of time" for a U.S. grantor or beneficiary of a foreign trust to pay the trust the "fair market value" (FMV) for the "personal use" of trust property under section 643(i)(2). This guidance should also include the determination of the proper FMV measurement and whether "de minimis" amounts can be such a small amount as to make accounting for them unreasonable or administratively impractical. "Safe harbor" guidelines to administer this new law also would be appreciated. For example, a grantor or beneficiary might personally maintain landscaping requirements (at no compensation) for a rental property owned by a foreign trust, but have little or no personal use of the property during the year. [Note: See AICPA comments to IRS, submitted March 28, 2011.]

22. Regulations are needed to enhance guidance in Notice 2009-85 regarding the reporting of tax withholding and payment of these taxes by trustees to the IRS. Such guidance is needed as to the appropriate forms and reporting on applicable tax returns. Guidance on possible "expedited" procedures for successful receipt of a private letter ruling for an expatriate to determine the value of his or her interest in the trust would be appreciated. This guidance should also define "adequate security" for a "tax-deferred agreement" for the covered expatriate's return under section 877A(b).

23. Regulations are needed under section 6677 regarding the failure to file information with respect to certain foreign trusts. The HIRE Act amended section 6677, but guidance is not adequate in Notice 97-34, the only IRS guidance on making a determination on penalties under section 6677. New recently designed letters, as described in IRS memorandum SBSE-20-0709-016, provide determination letters based upon a review of a taxpayer's compliance with section 6677, but taxpayers need regulations to provide them with guidance before the applicable letter is issued.